

Decision 05-03-021 March 17, 2005

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF
CALIFORNIA**

In the Matter of the Application of Walnut Ranch
Water Company, Inc. U-74-W, for Authority to
sell its Water System located in Colusa County to
Del Oro Water Company, Inc. U-61-W, Pursuant
to Public Utilities Code Section 851.

Application 04-07-047
(Filed July 29, 2004)

O P I N I O N

Summary

In the joint sale application, Daryl Morrison and Arthur Coupe seek Commission authorization to sell and transfer ownership of the Walnut Ranch Water Company (WRWC), and Del Oro Water Company (Del Oro), seeks to acquire WRWC. The reason for the proposed transfer is the sellers' desire to dispose of the water system because they want to discontinue doing business as a regulated public utility. The buyer has extensive experience in water utility operations and can provide proper service to the customers and can ensure an orderly ownership transfer.

Background

Decision (D.) 74514 granted H. Leslie Sanborn, Jr. and his wife, Cecilia M. Sanborn, a certificate of public convenience and necessity to construct and operate WRWC on August 6, 1968. On September 10, 1987, D.87-09-016 authorized the transfer of all outstanding shares of Walnut Ranch to Daryl

Morrison and Arthur Coupe. Walnut Ranch serves 79 connections in the area of Walnut Ranch Unit 1 and vicinity, located about one mile south of the city of Colusa, Colusa County.

The system consists of two wells, a 5,000-gallon steel storage tank, and distribution mains. The ground-water basin is not adjudicated and there is no limit on pumping. There are no new wells to be constructed and therefore water rights are not an issue. The water mains consist of four, six, and eight-inch standard cement asbestos pipes installed nearly forty years ago.

The last activity before the Commission from WRWC was Advice Letter (AL) 18, filed May 30, 2000, to modify the interest on deposits. WRWC's last General Rate Case (GRC) was filed by draft A L 8 in 1985, and approved in D.86-04-008, effective May 7, 1986. The approved rate of return was 11%.

WRWC requests authority, pursuant to § 851 of the Public Utilities (PU) Code and Rules 1 through 7, 15 through 17, 35, and 36 of the Commission's Rules of Practice and Procedure to transfer its water system and public utility water service responsibilities to Del Oro.

Notice of the filing appeared on the Commission's Daily Calendar of August 6, 2004. No protests have been received.

Sales Agreement

The sales agreement calls for a purchase price of \$43,040. The purchase price has been paid in cash on close of escrow. WRWC indicates the net book value of the total plant in service is \$43,443. The Water Division examined available records of the water system including recent balance sheets, income statements, the sales agreement, and other pertinent records, and find them satisfactory. Del Oro has the financial net worth and sufficient liquid assets to

own and operate WRWC and to make anticipated and unanticipated capital repairs and keep the water system in good working order.

California Environmental Quality Act (CEQA)

In their application, the applicants indicated they do not believe the proposed transaction is subject to the CEQA. We construe this argument to be a motion under our Rule 17.2 for determination of the applicability of CEQA. We have reviewed the application to determine whether CEQA applies to this proposed conveyance.

CEQA applies to a “project” or action “which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change . . . [and involves] the issuance to a person of a lease, permit, license, certificate, or entitlement for use by one or more public agencies.”¹ If an application does involve a project under CEQA, our Rule 17 imposes other procedures and requirements on the applicant.

We have previously held that a change in ownership may give rise to foreseeable indirect physical changes to the environment; but, absent substantial evidence of such indirect changes, the application for approval of the ownership change does not involve a project within the meaning of CEQA.

Del Oro has no knowledge or information concerning the presence of any species listed as threatened or endangered under federal or California law or of the habitat of such species.

Based on this information, we do not believe there is any substantial evidence of any potential direct or indirect change to the environment as the result of our approval of this application. As a result, we conclude that our approval of the application is not a project as defined by CEQA. Even if an

¹ CEQA Guidelines, CAL. CODE REGS. tit. 14, § 15378(a) (2003).

indirect environmental change might result as a consequence of our approval, we believe the project would be exempt under CEQA.² We conclude that CEQA review of the application is not required.

Purchase Price

As noted earlier, the proposed purchase price of \$43,040 is approximately the book value arrived at by adding the fixed assets of the water system and subtracting out accumulated depreciation. The Water Division reviewed the calculations contained in the application and confirmed them with Commission-adopted resolutions and annual reports filed with the Commission.

PU Code § 2720 requires the Commission to use fair market value in establishing the rate base for an acquired water system.

PUC § 2720:

“(a) The commission shall use the standard of fair market value when establishing the rate base value for the distribution system of a public water system acquired by a water corporation. This standard shall be used for ratesetting.

(1) For purposes of this section, "public water system" shall have the same meaning as set forth in Section 116275 of the Health and Safety Code.

(2) For purposes of this section, "fair market value" shall have the same meaning as set forth in Section 1263.320 of the Code of Civil Procedure.

(b) If the fair market value exceeds reproduction cost, as determined in accordance with Section 820 of the Evidence Code, the commission may include the difference in the rate base for ratesetting purposes if it finds that the additional amounts are fair and reasonable. In determining whether the additional amounts are fair and reasonable the commission shall consider whether the acquisition of the public water system will improve water system reliability, whether the ability of the water system to comply with health and safety regulations is improved, whether the water

² See CEQA Guidelines, CAL. CODE REGS. tit. 14, § 15061(b)(4) (2003) (a project is exempt where “it can be seen with certainty that there is no possibility that the activity . . . may have a significant effect on the environment . . .”).

corporation by acquiring the public water system can achieve efficiencies and economies of scale that would not otherwise be available, and whether the effect on existing customers of the water corporation and the acquired public water system is fair and reasonable.

(c) The provisions of subdivisions (a) and (b) shall also be applicable to the acquisition of a sewer system by any sewer system corporation or water corporation.

(d) Consistent with the provisions of this section, the commission shall retain all powers and responsibilities granted pursuant to Sections 851 and 852. “

The Water Division believes that the purchase price of \$43,040 meets fair market value as it represents close to the depreciated assets of the water system. The price is also what a willing buyer wants to pay and a willing seller wants to accept.

Service Quality

The buyer can provide management of the operations of WRWC when the transfer of ownership is approved by the Commission. Del Oro has extensive experience in the provision of water services in the State of California. Since 1963, Del Oro has operated under the regulatory jurisdiction of the Commission and currently provides water service to over approximately 6,255 customers. Del Oro can provide operational and maintenance services, collect water samples as required by Department of Health Services, respond to emergencies, and prepare reports to governmental agencies regarding the operation of the water system.

There were no complaints received. We find that it is advantageous to the customers of WRWC to have the transfer go into effect.

Service Continuity

Del Oro wishes to acquire WRWC because it can be profitably and efficiently consolidated with the regulated water systems that the Buyer already owns and operates. The sale agreement ensures an orderly water system

ownership transition, and thereby (1) offers continued water service by a responsible and experienced new owner, and (2) greatly reduces the chance of the water system being abandoned.

The contract between WRWC and Del Oro provides:

1. WRWC transfers authority to operate the system and the entire assets of the company to Del Oro for the amount of \$43,040.
2. WRWC will execute an Operations and Maintenance Contract with Del Oro. WRWC will become a new Del Oro district. Del Oro will refund all customer deposits when due.
3. All refundable advances to WRWC for main extensions have been paid on a current basis. None are overdue.
4. Del Oro agrees to pay all appropriate refunds on advances for main extensions which fall due in the future.
5. Approval must be obtained from the California Public Utilities Commission (CPUC).

Water and sewer utilities subject to Commission jurisdiction were required by the Legislature beginning July 1, 1983, to impose user fees on customers' bills. (*See* Pub. Util. Code §§ 401, et seq.) The continuance of Commission jurisdiction at the time of transfer to Del Oro means the collection of these fees will still be required. For that period of time prior to transfer, WRWC should be required to collect and remit these fees before it can transfer its public utility responsibilities to Del Oro.

Del Oro plans to adopt the current WRWC tariff rates until a GRC is filed for the new district. The sale relieves WRWC of its duty to provide public utility water service in the Walnut Ranch area.

Ratepayer Indifference

The Commission requires a test of ratepayer indifference when evaluating the sale of a public utility. Under the test, any sale of a public utility should not have any net consequences that cause the ratepayer to prefer the seller to the

buyer. For example, the ratepayer should not be subject to increased rates or reduced service as the result purely of a change of ownership. In recent years, the Commission has further required the buyer to demonstrate that the buyer's acquisition of the public utility yields a tangible benefit to the ratepayer.

Using the ratepayer indifference test to assess the sale of the water system from the WRWC to Del Oro, the Water Division evaluated several key metrics including: (1) the impact of purchase price on ratebase; (2) service quality; and (3) continuity of service. We have determined that Del Oro can assume the ownership without incurring financial trouble, or raising the rates of its customers beyond what the rates ordinarily would be. Del Oro plans to effectively control costs and bill the customers at appropriate rates as permitted by the Commission. The Water Division believes that the customers of WRWC will be better served under the new owner. Thus, the proposed transfer would satisfy even the more stringent ratepayer benefit test.

Water Division Conclusions

Both parties desire the transfer of WRWC to Del Oro. The sellers desire to exit the water utility business because they no longer want to continue doing business as a regulated public utility. Del Oro has been providing water services to the general public since 1963. The Water Division recommends:

- (1) That the joint application, A.04-07-047, be approved as requested.
- (2) That the cash sale agreement between WRWC and Del Oro for a total purchase price of \$43,040 be authorized.
- (3) That Del Oro be authorized to purchase all of the assets and assume the obligations at WRWC per the purchase agreement.

- (4) That the sellers be granted authorization to withdraw from providing water utility service to customers of WRWC and Del Oro be granted ownership of WRWC and provide water utility service to its customers.

Uncontested Matter

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to PU Code § 311(g) (2), the otherwise applicable 30-day period for public review and comment is being waived.

Categorization and Need for Hearings

In Resolution ALJ 176-3137 dated August 20, 2004, the Commission preliminarily categorized this application as adopted, and preliminarily determined that hearings were not necessary. No protests have been received. Given this status, public hearing is not necessary and it is not necessary to alter the preliminary determinations made in Resolution ALJ 176-3137.

Assignment of Proceeding

Kevin Coughlan is the assigned Examiner in this proceeding.

Findings of Fact

1. The transfer of WRWC from Daryl Morrison and Arthur Coupe to Del Oro is desired by both parties.
2. WRWC serves 79 connections in the area of Walnut Ranch Unit adjacent to the City of Colusa, Colusa County.
3. Sellers no longer desire to continue doing business as a regulated public utility.
4. Del Oro has extensive experience in providing water services in the State of California under the regulated jurisdiction of the Commission since 1963.
5. The purchase price of the system, \$43,040, is the fair market value as required by PU Code § 2720.

6. Ratepayers will benefit from the transfer because the prospective new owner has the financial net worth and sufficient liquid assets to own and to operate the water system.

7. It is reasonably certain the sale and transfer of this system will have no significant effect on the environment.

8. There is no known opposition to the proposed sale and transfer.

9. After consummation of the transfer, WRWC will no longer provide public utility service in the Walnut Ranch area, Del Oro having assumed these duties and obligations.

10. This order should become effective immediately as sellers and buyer have completed all elements of the transaction except for the Commission's approval.

Conclusions of Law

1. Transfer of ownership of the WRWC meets the test of ratepayer indifference, in that customers will be unaffected in terms of service, water quality, and continuity of service.

2. Pursuant to the California Health and Safety Code, a change in ownership of a public water system shall, and a change in regulatory jurisdiction may, require application for a new operating permit from the California Department of Health Services.

3. Our approval of the proposed conveyance does not constitute a project under the CEQA and no further environmental review is required under that statute.

4. A public hearing of this Application is not necessary.

5. This is an uncontested matter in which the decision grants the relief requested.

6. This order should be made effective immediately so as to permit prompt consummation of the sale and transfer.

ORDER

IT IS ORDERED that:

1. The application of Daryl Morrison and Arthur Coupe (Sellers) to sell and transfer the Walnut Ranch Water Company (WRWC) and of Del Oro Water Company (Del Oro) to acquire WRWC is granted.
2. WRWC shall remit to the Commission's Fiscal Office all of the Commission's Users Fees collected to the date of transfer of ownership of the water system.
3. Del Oro is authorized to acquire ownership of and provide the water utility service to the customers of WRWC.
4. Applicants within 10 days of the transfer of ownership shall notify the Director of the Water Division in writing that the transfer has taken place, attaching copies of the transfer document.
5. Upon consummation of the transfer of ownership, the sellers shall be relieved of public utility responsibility for the operation of the WRWC.
6. Application 04-07-047 is closed.

This order is effective today.

Dated March 17, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners